IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

ST.Rev..No. 469 of 2004()

AGAINST THE ORDER IN CO 126 2003 IN
TA.1163/2003 of S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

REVISION PETITIONER

CAREPLAST INDUSTRIES, 102,
DEVELOPMENT PLOT, SOUTH KALAMASSERRY,
ERNAKULAM DIST.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI.V.V. ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 01/11/2006, ALONG WITH STRV NO. 470 OF 2004
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M. JOSEPH, JJ.

S.T. REV. NOS. 469 & 470 OF 2004

Dated this the 1st day of November, 2006

JUDGMENT

Ramachandran Nair,J.

The question raised is whether the Tribunal is justified in sustaining the demand of differential tax over the concessional rate of tax paid by the petitioner on purchase of raw materials under Section 5 (3) of the KGST Act. The petitioner used the said raw materials for manufacture of polythene covers which are sold to fish exporters for packing products for export. By virtue of notification which granted exemption on packing materials used for packing goods for export, the purchasers were not liable to pay tax on their purchases of packing materials. However, the petitioner claimed concessional rate on raw materials by furnishing declarations to sellers and the same was allowed. Therefore the assessing officer by applying first proviso to Section 5(3) demanded differential tax on purchase turnover of raw materials on the ground that the items manufactured with the raw materials purchased was sold for export. The Tribunal upheld the order of assessment against which these Tax Revisions are filed. We heard

counsel for the petitioner and Government Pleader.

2. The petitioner is not exporting the materials and the packing materials got exported through the buyer only because it was used for packing of goods for export. Even though it makes no difference whether the export is by the petitioner or whether goods got exported through the purchaser, no tax is recovered and remitted to the State for the final product manufactured which is a condition for availing concessional rate under Section 5(3) of the KGST Act. However, we feel petitioner's case calls for sympathetic consideration because this Court had taken consistent view in the decisions in STO V. RAGAM PLASTICS, (1989)2 KLT 480 and M/S. ENNARI ELECTRONIC CAPACITORS AND COMPONENTS LTD. V. STATE OF KERALA, (2003) 11 K.T.R. 520 (Ker.) that units enjoying sales tax exemption on the sale of product manufactured by them are entitled to concessional rate for purchase of raw materials under Section 5(3) of the KGST Act and assessee had only taken the benefit of the said decisions. Special Government Pleader contended that these decisions do not lay down correct law, and have to be reconsidered by this Court. However, we

do not think we should consider the correctness of these decisions for the sake of these cases because for several years, all parties have enjoyed the benefit of these decisions. Therefore for the sake of consistency we uphold the claim of the petitioner and reverse the order of the Tribunal and direct the Officer to revise the assessment by withdrawing the demand of differential tax on raw materials purchased by the petitioner during these periods.

S.T.Revs. are allowed as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M. JOSEPH)
Judge.